

OPINION
59-149

May 20, 1959 (OPINION)

JUDICIAL BRANCH OF GOVERNMENT

RE: Jurors - Fees and Mileage

This is in reply to your inquiry of May 15, 1959, in which you ask whether or not jurors are entitled to mileage to their homes each night while on jury duty.

Basically compensation and mileage to jurors for service rests on statutory provision rather than common law. Section 27-0905 of the 1957 Supplement to the N.D.R.C. of 1943 as hereinafter set out is controlling.

FEEES AND MILEAGE FOR JURORS. A juror shall receive:

1. Six dollars, payable by the county, for each day's attendance in district or county court as a regular or special juror;
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4. Traveling expenses, payable by the county, of seven and one-half cents per mile for each mile actually and necessarily traveled each way." (Underscoring supplied)

The term "necessarily" means indispensable, unavoidable, or of necessity. By applying this meaning to the term in the statute it is observed that the travel must be indispensable and unavoidable. The need for travel in this respect must be relative to jury duty and not to the personal matters or convenience of the juror. A trip home each night as such cannot be classified as "of necessity."

This office has previously observed that generally jurors are paid mileage for one trip each way and are not compensated if they return home while excused.

However, this office has previously held that where the entire panel is excused for a period of five days, the county is justified in paying the extra mileage incurred.

LESLIE R. BURGUM

Attorney General